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Supreme Court of the United States

OCTOBER TERM, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
Appellant,

against

W. G. QUERY, J. P. DERHAM, and F. C. ROBINSON,
Personally and as Members of South Carolina Tax Commission, Respondents

---

ARGUMENT FOR RESPONDENTS

JOHN M. DANIEL, Atforney General,
J. FRASER LYON,
Counsel for Respondents.

THE R. L. BRYAN CO., COLUMBIA, S. C.
4-21-31-50

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STATEMENT

Graniteville Manufacturing Company is a corporation organized and existing under the laws of the State of South Carolina. It has its only office and place of business in Graniteville, South Carolina. At various times the officers of this corporation "made," "signed," "consigned," "shipped" certain promissory notes. All of these notes were sent by mail from Graniteville, South Carolina, to bankers outside the State either to Augusta, Georgia, Boston, Massachusetts, or New York City, New York. Money was borrowed on these several notes and the amount placed to the credit of plaintiff in the lending bank. When the notes were paid they were returned to Graniteville Manufacturing Company in South Carolina.

An Act of the South Carolina Legislature provides:

> "Section 1. That on and after the passage of this Act, there shall be levied, collected and paid, for and in respect of the several bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instrument, matter or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns or ships the same or for whose benefit or use the same are made, signed, issued, sold, removed, consigned or shipped, the several taxes specified in such schedule."

"SCHEDULE A

> "4. Notes, Written Obligations to Pay Money.—Promissory notes, except bank notes issued for circulation and executory contracts for the payment of money which are executed or carried out in an instrument of writing to which documentary stamps are affixed; non-negotiable notes; written obligations to pay money, except as may herein otherwise be provided for; assignment of salaries, wages or other compensation; and for each renewal of

same for a sum not exceeding One Hundred ($100.00) Dollars, four (4) cents; and for each additional One Hundred ($100.00) Dollars, or fractional part thereof, four (4) cents.

"Mortgage which incorporate the certificate of indebtedness not otherwise shown in separate instrument are subject to a tax at the same rate."

Acts of S. C., 1928, pages 1090, 1094.

South Carolina Tax Commission has construed this Act of the Legislature and so administered it as imposing a tax on account of the paper upon which the note is written or printed and upon the execution, signing and issuing thereof in this State. If a note is signed or executed in another State and sent into South Carolina for discount or otherwise, no tax is claimed, as in such case no facility is used in South Carolina for the creation of such document. This law as administered in South Carolina is a tax upon a facility used in this State by this domestic corporation.

As held by the District Court this is an excise tax.

The South Carolina Act is substantially and in effect the same as the Act of Congress levying an excise tax on certain documents. The Act of Congress is set forth on the margin in the case of *Nicol v. Ames*, 19 Sup. Ct. Rep., 522; 173 U. S., 509.

In the above cited case this Court construing that Act of Congress said:

"It is not a tax upon the business itself which is so transacted, but it is a duty upon the facilities made use of, and actually employed, in the transaction of the business, and separate and apart from the business itself. It is not a tax upon the members of the exchange, nor upon membership therein, nor is it a tax upon sales generally. The Act limits the tax to sales at any exchange, or board of trade, or other similar place; and its fair meaning is to impose a duty upon those privileges, or facilities which are there found and made use of in the sale at such place

of any product or merchandise. Whether this facility or privilege is such a thing as can be legally taxed, while leaving untaxed all other sales made outside of such places, will be discussed further on. At present it is enough to say that the tax is not upon the property sold, and cannot on that ground be found to be direct. The tax laid in the same Act upon a broker's note or memorandum of sale is a separate tax, although it may have reference to the same transaction. It is a tax on the note or memorandum itself, where made by a broker, while in the other case tax, although measured in amount by a reference to the value of the thing sold, is in reality upon the privilege or facility used in the transaction or sale. The tax is not a direct tax, within the meaning of the constitution, but is, as already stated, in the nature of a duty or an excise. The amount of such a tax, when imposed in a case like this, may be increased or diminished by the extent to which the privilege or facility is used, and it is measured in this act by the value of the property transferred by means of using such privilege or facility; but this does not make the tax a direct one."

Nicol v. Ames, 19 Sup. Ct. Rep., 526, 527, 173 U. S., 509.

Respondents rely upon the very clear reasoning of the District Court in the order herein appealed from both as to the nature of the tax and as to the inapplicability of the decisions of this Court in the several succession or inheritance tax cases cited by appellant. By reason of recent decisions in inheritance or succession tax cases, it is now the law that the succession to intangibles is taxable only at the domicile of the owner as the succession takes place there. There is no succession in this case. The facility which appellant uses and which, under the laws of South Carolina, it is empowered to use, is exercised wholly within South Carolina, *i. e.,* the paper upon which the note is written and the signing and issuing thereof.

We take the liberty of calling to the attention of the Court an article appearing in the Harvard Law Review of March,

1931, and for the convenience of the Court a copy thereof is set forth in the appendix hereto.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General.

J. FRASER LYON,
Respondents' Attorney.

APPENDIX

"Taxation—Where Property May Be Taxed: Choses in Action—Stamp Tax on Promissory Notes.—In connection with the conduct of its manufacturing business in South Carolina, a local corporation established credits with banks outside the state. Whenever a loan was desired, a note signed by its officers was sent by mail to a bank, always subject, however, to revocation until accepted there. All these notes were made payable at the banking houses. Some were issued and mailed from the corporation's office in Georgia; others were made and mailed in South Carolina. The South Carolina law requires the payment of a stamp tax by any person who issues, makes, or signs a promissory note, or by any person for whose benefit such a note is issued, made, or signed. 35 S. C. Stat., 1089 (1928). The corporation brought suit in a federal district court to enjoin the tax commissioner's threatened levy of execution on its property for failure to pay stamp taxes upon the notes issued. **Held,** that the notes wholly formed outside the state are beyond its taxing power, but that the State may tax the notes which were made and mailed within its borders, even though the contract was not completed there. Injunction granted in part and refused in part. *Graniteville Mfg. Co. v. Query,* 44 F. (2d), 64 (E. D. S. C., 1930).

"The constitutional restrictions with which the Supreme Court has largely concerned itself in cases dealing

with taxes upon activities have been those of jurisdiction and classification rather than the nature of the activities taxed. *Cf. Louisville Gas & Elec. Co. v. Coleman*, 277 U. S., 32 (1928); *Compania De Tabacos v. Collector*, 275 U. C., 87 (1927); *Hatch v. Reardon*, 204 U. S., 152 (1907) *Allgeyer v. Louisiana*, 165 U. S., 578 (1897). Domicile of the actor does not give a state jurisdiction to levy an excise tax upon transactions which are extra-territorial. *Allgeyer v. Louisiana, supra.* Nor does a state acquire jurisdiction by the fact that a transaction is effectuated for the benefit of a business which is carred on within its borders. *St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S., 346 (1922); *Compania De Tabacos v. Collector, supra.* The notes made and issued outside the state are therefore beyond the state's taxing power. But as to the notes made in South Carolina, all of the acts of the corporation, subsequent to the credit arrangement, which produced the contract were done within the state. And no constitutional limitation requires that the levy of excises on contractual transactions be confined to the state in which the contract is completed. *Cf. Palmetto Fire Ins. Co. v. Conn.*, 272 U. S., 295 (1926); *Compania De Tabacos v. Collector, supra;* see 4 Cooley, Taxation (4th Ed., 1924), Sec. 1679. Counsel relied upon recent cases invalidating statutes which impose an inheritance tax upon estates in respect to debts owed to non-resident decedents by persons domiciled within the state. *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S., 204 (1930); *Cf. Baldwin v. Missouri*, 281 U. S., 586 (1930); see Note (1930), 43 Harv. L. Rev., 792. But in these cases the testamentary transfer, unlike the issuance of the notes in the instant case, was effected entirely outside the taxing state. And while the *raison d'etre* of the inheritance tax holdings is the desire to avoid double taxation, the whole course of decisions in excise tax cases permits multiple taxation of activities which transcend state lines. *Compania De Tabacos v. Collector, supra; Palmetto Ins. Co. v. Conn., supra;* see *Farmers Loan & Trust Co. v. Minnesota, supra,*

at 213 (specific exception of intangibles which have acquired a business *situs*); *Cf. Powell, The Business Situs of Credits* (1922), 28 W. Va. L. Q., 89."

Harvard Law Review, March, 1931, page 869.